

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Eldys Rodriguez, #49863-004,)	
)	
Petitioner,)	Civil Action No. 6:05-0709-MBS-WMC
)	
vs.)	<u>REPORT OF MAGISTRATE JUDGE</u>
)	
Matthew B. Hamidullah, Warden, FCI Estill,)	
)	
Respondents.)	
)	

The petitioner brought this action seeking relief pursuant to Title 28, United States Code, Section 2254. On May 10, 2005, the respondent filed a motion to dismiss or, in the alternative, for summary judgment. By order of this court filed May 12, 2005, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the petitioner was advised of the summary judgment dismissal procedure and the possible consequences if he failed to respond adequately. On May 16, 2005, the petitioner filed his own motion for summary judgment; however, he did not respond to the respondent's motion to dismiss. Therefore, on July 5, 2005, the court entered an order giving the petitioner through July 28, 2005, to respond to the motion to dismiss. The petitioner was advised that failure to do so would result in dismissal of the case for failure to prosecute.

On July 19, 2005, the petitioner filed a motion for extension of time to file his response. The motion was granted the same day, giving the petitioner through August 29, 2005, to respond to the motion to dismiss. The petitioner has failed to file his response.

Based on the foregoing, it appears the petitioner no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989), *cert. denied*, 493 U.S. 1084 (1990).

s/William M. Catoe
United States Magistrate Judge

August 31, 2005

Greenville, South Carolina